

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2034 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

SMT. RAMPYARI VIJAYSINH TALUKHSINH INDA

Versus

STATE OF GUJARAT & ANR.

Appearance:

Shri S.H. Sanjanwala, Advocate, for the
Petitioner

Shri T.H. Sompura, Asst. Govt. Pleader, as
instructed by Messrs. Purnanand & Co., for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 23/07/96

ORAL JUDGEMENT

The order passed by the District Development Officer at Bulsar (respondent No. 2 herein) on 8th November 1983 as affirmed in revision by the order passed by and on behalf of the State Government (respondent No.

1 herein) on 20th February 1984 is under challenge in this petition under articles 226 and 227 of the Constitution of India. By his impugned order, respondent No. 2 cancelled what is popularly known as the N.A. permission granted by the order passed on 6th May 1982 on the ground that the sale transaction in favour of the petitioner was in contravention of sec. 73AA of the Bombay Land Revenue Code, 1879 (the Code for brief).

2. The facts giving rise to this petition move in a narrow compass. The dispute centres round one parcel of land bearing Survey No. 196/3 situated at Taluka Pardi District Bulsar (the disputed land for convenience). The petitioner purchased it some time on 24th May 1982 from its original owners. Prior thereto, by the order passed on 6th May 1982, they had obtained the N.A. permission with respect thereto. Its copy is at Annexure D to this petition. It appears that its mutation in the revenue records in the name of the petitioner was refused on the ground that the sale transaction was in contravention of sec. 73AA of the Code. It appears that an inquiry was undertaken by the Deputy Collector in that regard and by his order passed on 18th March 1983, the Deputy Collector at Bulsar held the sale transaction in favour of the petitioner to be invalid on the ground of contravention of sec. 73AA of the Code. The aggrieved petitioner carried the matter in appeal before the Collector of Bulsar. It came to be registered as Appeal No. 4 of 1983. By the order passed on 30th May 1983 in the aforesaid appeal, the Collector of Bulsar set aside the aforesaid order passed by the Deputy Collector at Bulsar and remanded the matter to the latter for restoration of the proceeding to file and for his fresh decision according to law. Its copy is at Annexure B to this petition. Pursuant thereto, the Deputy Collector at Bulsar, by his order passed on 26th September 1983, came to the conclusion that the sale transaction in favour of the petitioner was not in contravention of the aforesaid statutory provision contained in sec. 73AA of the Code. Its copy is at Annexure C to this petition. It appears that thereafter one Naranji Gandabhai Desai moved respondent No. 2 by his application of 27th April 1983 for cancellation of the N.A. permission on the ground that the sale transaction in favour of the petitioner was in contravention of sec. 73AA of the Code. Thereupon, by the order passed on 8th November 1983, respondent No. 2 cancelled the N.A. permission. Its copy is at Annexure E to this petition. The aggrieved petitioner carried the matter in revision before respondent No. 1 under sec. 211 of the Code. By the order passed on 20th February 1984, respondent No. 1 rejected the revisional

application made by the petitioner. Its copy is at Annexure F to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure E to this petition as affirmed in revision by the order at Annexure F to this petition.

3. The grievance of the petitioner before this Court is two-fold. In the first place, learned Advocate Shri Sanjanwala for the petitioner has submitted that the impugned order at Annexure E to this petition is passed in contravention of the audi alteram partem rule and it therefore cannot be sustained in law. His second submission is to the effect that the sale transaction in favour of the petitioner was not in contravention of sec. 73AA of the Code as found by the Deputy Collector at Bulsar by his order at Annexure C to this petition and the N.A. permission could not have been cancelled on that ground by the impugned order at Annexure E to this petition.

4. The petitioner has made clear averments in this petition more particularly in Ground No. 4 that the impugned order at Annexure C to this petition was passed without even issuing a show-cause notice and without even supplying a copy of the application made by said Naranji Gandabhai. It cannot be gainsaid that the petitioner purchased the disputed land only after the order of the N.A. permission was passed. It appears from the revenue records that her name was not mutated in the revenue records by the Mamlatdar on the ground that the sale transaction in question was in contravention of sec. 73AA of the Code. That fact has been taken note of by respondent No. 2 in his impugned order at Annexure E to this petition. In that view of the matter, before passing the impugned order at Annexure E to this petition, it was incumbent upon respondent No. 2 to have issued a show-cause notice to the petitioner before passing any order adverse to the petitioner. It cannot be gainsaid that the impugned order at Annexure E to this petition is adverse to the petitioner. It could not have been passed without affording an opportunity of hearing to the petitioner. No opportunity of hearing is admittedly given to the petitioner. In his reply affidavit, respondent No. 2 has gone to the extent of saying that the petitioner was not a party to the application filed by Naranji Gandabhai, and as such it was not necessary to hear the petitioner. To say the least, such approach on the part of respondent No. 2 can be said to be contrary to all canons of common sense

apart from violation of principles of natural justice. It would display the total ignorance of law on the part of the author of the reply affidavit. It can be said that he does not know even elementary principles of law. The impugned order at Annexure E to this petition as affirmed in revision by the order at Annexure F to this petition cannot therefore be sustained in law on this ground alone.

5. It transpires from the order of the Deputy Collector at Bulsar at Annexure C to this petition that the sale transaction in favour of the petitioner was found not to be violative of sec. 73AA of the Code. If any show-cause notice was issued before passing the impugned order at Annexure E to this petition, she could have pointed out the Deputy Collector's order at Annexure C to this petition in support of her case that the sale transaction in question was not in contravention of sec. 73AA of the Code. It is however not desirable at this stage to enter into the merits of this matter though the petitioner has clearly averred in this petition that the order at Annexure C to this petition has not been carried further in appeal or in revision. It would however be open to the petitioner to produce the order at Annexure C to this petition before the concerned authority if any fresh proceeding is undertaken for cancellation of the N.A. permission at Annexure D to this petition.

6. In view of my aforesaid discussion, the impugned order at Annexure E to this petition as affirmed in revision by the order at Annexure F to this petition cannot be sustained in law. It has to be quashed and set aside. This judgment of mine shall however not preclude the concerned authority, if it is deemed just and proper after so many years, from taking action for cancellation of the N.A. permission at Annexure D to this petition on the ground of contravention of sec. 73AA of the Code after serving the necessary show-cause notice to the petitioner and after affording an opportunity of hearing to her. It would be open to the petitioner at that stage to produce before the concerned authority the order at Annexure C to this petition in support of her case that the sale transaction in her favour was not in contravention of the aforesaid statutory provision.

7. In the result, this petition is accepted. The order passed by the District Development Officer at Bulsar on 8th November 1983 at Annexure E to this petition as affirmed in revision by the order passed by and on behalf of the State Government on 20th February 1984 at Annexure F to this petition is quashed and set

aside. Rule is accordingly made absolute with no order
as to costs.
